

ASSEMBLY BILL

No. 569

Introduced by Assembly Member Cohn

February 18, 2003

An act to amend Section 3048 of the Family Code, relating to custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 569, as introduced, Cohn. Child abduction prevention.

Existing law requires, in cases in which the court becomes aware of facts which may indicate that there is a risk of abduction of a child, the court to determine whether measures are needed to prevent the abduction of the child by one parent. In making that determination, the court is required to consider specified factors.

This bill would make a technical, nonsubstantive change to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3048 of the Family Code is amended to
2 read:
3 3048. (a) Notwithstanding any other provision of law, in any
4 proceeding to determine child custody or visitation with a child,
5 every custody or visitation order shall contain all of the following:
6 (1) The basis for the court's exercise of jurisdiction.
7 (2) The manner in which notice and opportunity to be heard
8 were given.

1 (3) A clear description of the custody and visitation rights of
2 each party.

3 (4) A provision stating that a violation of the order may subject
4 the party in violation to civil or criminal penalties, or both.

5 (5) Identification of the country of habitual residence of the
6 child or children.

7 (b) (1) In cases in which the court becomes aware of facts
8 which may indicate that there is a risk of abduction of a child, the
9 court shall, either on its own motion or at the request of a party,
10 determine whether measures are needed to prevent the abduction
11 of the child by one parent. To make that determination, the court
12 shall consider the risk of abduction of the child, obstacles to
13 location, recovery, and return if the child is abducted, and potential
14 harm to the child if he or she is abducted. To determine whether
15 there is a risk of abduction, the court shall consider the following
16 factors:

17 (A) Whether a party has previously taken, enticed away, kept,
18 withheld, or concealed a child in violation of the right of custody
19 or of visitation of a person, regardless of whether the party acted
20 in compliance with Section 278.7 of the Penal Code or not.

21 (B) Whether a party has previously threatened to take, entice
22 away, keep, withhold, or conceal a child in violation of the right
23 of custody or of visitation of a person.

24 (C) Whether a party lacks strong ties to this state.

25 (D) Whether a party has strong familial, emotional, or cultural
26 ties to another state or country, including foreign citizenship. This
27 factor shall be considered only if evidence exists in support of
28 another factor specified in this section.

29 (E) Whether a party ~~has no~~ *lacks any* financial reason to stay
30 in this state, including whether the party is unemployed, is able to
31 work anywhere, or is financially independent.

32 (F) Whether a party has engaged in planning activities that
33 would facilitate the removal of a child from the state, including
34 quitting a job, selling his or her primary residence, terminating a
35 lease, closing a bank account, liquidating other assets, hiding or
36 destroying documents, applying for a passport, or applying to
37 obtain a birth certificate or school or medical records.

38 (G) Whether a party has a history of domestic violence, lack of
39 parental cooperation, or child abuse.

40 (H) Whether a party has a criminal record.

1 (2) If the court makes a finding that there is a need for
2 preventative measures after considering the factors listed in
3 paragraph (1), the court shall consider taking one or more of the
4 following measures to prevent the abduction of the child:

5 (A) Ordering supervised visitation.

6 (B) Requiring a parent to post a bond in an amount sufficient
7 to serve as a financial deterrent to abduction, the proceeds of which
8 may be used to offset the cost of recovery of the child in the event
9 there is an abduction.

10 (C) Restricting the right of the custodial or noncustodial parent
11 to remove the child from the county, the state, or the country.

12 (D) Restricting the right of the custodial parent to relocate with
13 the child, unless the custodial parent provides advance notice to,
14 and obtains the written agreement of, the noncustodial parent, or
15 obtains the approval of the court, before relocating with the child.

16 (E) Requiring the surrender of passports and other travel
17 documents.

18 (F) Prohibiting a parent from applying for a new or
19 replacement passport for the child.

20 (G) Requiring a parent to notify a relevant foreign consulate or
21 embassy of passport restrictions and to provide the court with
22 proof of that notification.

23 (H) Requiring a party to register a California order in another
24 state as a prerequisite to allowing a child to travel to that state for
25 visits, or to obtain an order from another country containing terms
26 identical to the custody and visitation order issued in the United
27 States (recognizing that these orders may be modified or enforced
28 pursuant to the laws of the other country), as a prerequisite to
29 allowing a child to travel to that county for visits.

30 (I) Obtaining assurances that a party will return from foreign
31 visits by requiring the traveling parent to provide the court or the
32 other parent or guardian with any of the following:

33 (i) The travel itinerary of the child.

34 (ii) Copies of round trip airline tickets.

35 (iii) A list of addresses and telephone numbers where the child
36 can be reached at all times.

37 (iv) An open airline ticket for the left-behind parent in case the
38 child is not returned.

39 (J) Including provisions in the custody order to facilitate use of
40 the Uniform Child Custody Jurisdiction and Enforcement Act

1 (Part 3 (commencing with Section 3400)) and the Hague
2 Convention on the Civil Aspects of International Child Abduction
3 (implemented pursuant to 42 U.S.C. Sec. 11601 et seq.), such as
4 identifying California as the home state of the child or otherwise
5 defining the basis for the California court's exercise of jurisdiction
6 under Part 3 (commencing with Section 3400), identifying the
7 United States as the country of habitual residence of the child
8 pursuant to the Hague Convention, defining custody rights
9 pursuant to the Hague Convention, obtaining the express
10 agreement of the parents that the United States is the country of
11 habitual residence of the child, or that California or the United
12 States is the most appropriate forum for addressing custody and
13 visitation orders.

14 (K) Authorizing the assistance of law enforcement.

15 (3) If the court imposes any or all of the conditions listed in
16 paragraph (2), those conditions shall be specifically noted on the
17 minute order of the court proceedings.

18 (4) If the court determines there is a risk of abduction that is
19 sufficient to warrant the application of one or more of the
20 prevention measures authorized by this section, the court shall
21 inform the parties of the telephone number and address of the
22 Child Abduction Unit in the office of the district attorney in the
23 county where the custody or visitation order is being entered.

24 (c) The Judicial Council shall make the changes to its child
25 custody order forms that are necessary for the implementation of
26 subdivision (b). This subdivision shall become operative on July
27 1, 2003.

